United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 08-897**
	)	**Issued: January 5, 2009**
DEPARTMENT OF LABOR, OFFICE OF THE ASSISTANT SECRETARY FOR MANPOWER, Washington, DC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 5, 2008 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated August 29 and November 9, 2007 and January 18, 2008. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that he had disability caused by residuals of the accepted employment injury following the termination of compensation benefits on September 30, 2006; and (2) whether the Office properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 43-year-old manpower development specialist, sustained a heart attack on November 25, 1974. He filed a claim for benefits on January 28, 1975, which the Office

accepted the claim for acute myocardial infarction. Appellant was hospitalized and underwent cardiac catheterization. He has not worked for the employing establishment since that time.[1]

In order to determine appellant's current condition and to ascertain whether he still suffered residuals from his accepted condition, the Office referred him for a second opinion examination with Dr. Daniel J. Cassis, Board-certified in internal medicine and a specialist in cardiology. In a September 29, 2004 report, Dr. Cassis stated:

> "[Appellant's] current conditions revealed that he is status post coronary artery disease with bypass grafting as well as coronary artery angioplasty and coronary artery stents. The etiology of [appellant's] coronary are multifactorial. There is a genetic predisposition to coronary atherosclerosis and it is of course aggravated by various cardiovascular risk factors most of which [appellant] had, [including] cigarette smoking, diabetes mellitus, hypertension and hyperlipedemia. These were all pertinent risk factors that lead to develop enough coronary artery disease and [appellant] had all of these at some time in his life in many events preceding his initial presentation of chest pain in the 1970's.
>
> "[Appellant] first awakened with chest pain on November 25, 1974. It is true that stress can raise someone's blood pressure and heart rate and cause [him] to develop enough angina pectoris if indeed they already have preexisting coronary artery disease. The question as to whether or not stress can, has a mild to moderate obstructive coronary lesion to proceed to a high grade obstruction has been debated for some time. It is my feeling that the patient had preexisting coronary artery disease that was aggravated by the extreme stress he was under.
>
> "I would say he has no residual impairment secondary to the myocardial infarction in 1974. I would say that he has no residual impairment from that myocardial infarction as his overall fraction is quite good. The residual impairment is not secondary to the myocardial infarction but to the fact that he does have severe coronary artery disease.
>
> "I feel that [appellant] can return to work which will require stressful situations both mentally and/or physically. I feel that [appellant's] condition is such that his current level of functioning cannot be raised by any other request of medical or surgical approaches."

Dr. Cassis reiterated that appellant's functional capacity was unlikely to improve through any type of medical intervention, though he encouraged physical activity from an aerobic standpoint. He recommended that appellant's cardiovascular physician closely monitor his condition.

[1] Appellant continued to be gainfully employed in various private-sector positions until January 1991.

In an October 22, 2004 supplemental report, Dr. Cassis stated:

> "[Appellant] has severe coronary artery disease and is unable to do manual work. He could do sedentary work that is of low momentum and physical stress, work that he could do for no more than two to three hours per day."

On October 26, 2005 the Office issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Cassis' referral opinion, established that his accepted, employment-related myocardial infarction condition had resolved.

By letters dated November 4, 2005, January 14, August 28 and September 1, 2006, appellant contested the proposed termination on the grounds that his current condition prevented him from performing any gainful work and that his current condition resulted from residuals of his accepted myocardial infarction condition. He argued that he had been diagnosed with the conditions of arteriosclerotic heart, hypertension, borderline diabetes, anxiety disorder and hypercholesterolemia, all of which were caused by work-related stress and all of which were causally related to his accepted myocardial infarction condition. Appellant did not submit any new medical evidence.

By letter dated June 19, 2006, the Office asked Dr. Kamalakar T. Rao, Board-certified in internal medicine, a specialist in cardiology and the attending physician, to review a copy of Dr. Cassis' reports. It asked Dr. Rao to state whether he agreed with Dr. Cassis that there was no residual impairment stemming from the accepted 1974 myocardial infarction and that appellant's current condition was due to the progression of his underlying coronary artery disease. Dr. Rao responded "yes" with a checkmark, indicating that he agreed with Dr. Cassis' opinion.

By decision dated September 28, 2006, the Office terminated appellant's compensation, finding that Dr. Cassis' opinion that represented the weight of the medical evidence.

By letter dated October 23, 2006, appellant requested a review of the written record.

By decision dated February 2, 2007, an Office hearing representative affirmed the September 28, 2006 termination decision. However, he found that the record was unclear as to whether appellant continued to have residuals from employment-related stress. The hearing representative noted that, while the accepted myocardial infarction condition had resolved, Dr. Rao continued to treat appellant for coronary artery disease and Dr. Cassis had indicated that work-related stress had at least partly aggravated or contributed to this condition. The hearing representative therefore remanded to the district Office to obtain a supplemental report from Dr. Cassis to provide sufficient explanation and medical rationale regarding whether or not appellant's coronary artery disease could have been aggravated by his employment-related stress and whether such aggravation was temporary or permanent.

In a June 13, 2007 report, Dr. Cassis stated:

> "In regards to distress causing permanent or temporary aggravation of [appellant's] coronary artery disease, I would reply the following. Distress could very well have increased the inflammation in his coronary arteries causing a previous mild

> atheromatous plaque to rupture, and in doing so, the plaque could go from a 10 to 20 percent obstruction. This of course is impossible to prove at this point in time if it did cause this permanent aggravation of [appellant's] coronary artery disease. Certainly, it could temporarily aggravate his coronary disease by increasing heart rate and blood pressure therefore leading to myocardial ischemia and/or myocardial infarction."

In response to the Office's query, "If permanent what objective findings/medical findings would support this?" Dr. Cassis noted that this was a difficult question to answer definitively. He stated:

> "In general, a permanent aggravation of coronary artery disease would lead to myocardial infarction and myocardial damage. This would in turn lead to a decrease in contractility and left ventricular ejection fraction. The stress Cariolite scan performed by Dr. Chalasani on April 17, 2007, revealed no myocardial ischemia. There also was no objective evidence of a decrease in left ventricular fraction or wall motion abnormality. From this study, I would summarize that there was no permanent damage to the left ventricular that occurred during this stressful period when his coronary artery disease was aggravated."

In response to the Office's query, "Is [appellant's] coronary artery disease at the same level it would have been had he not worked for [the employing establishment]?" Dr. Cassis stated:

> "[Appellant's] coronary artery disease [would have been] at the same level. It would have been had [he] not worked for [the employing establishment]. Again this is impossible to prove definitively, but as I mentioned … stress could have aggravated [appellant's] coronary artery disease by causing increased inflammation in coronary arteries leading to a rupture of an atherosclerotic plaque. This in turn could cause a 10 to 20 percent obstruction to go to 80 to 90 percent obstruction in [a] relative[ly] short period of time. Therefore, I would summarize that his coronary artery disease would not have been at this level if he had not worked for [the employing establishment] and been placed under severe stressful situations."

By decision dated August 29, 2007, the Office found, based on Dr. Cassis' supplemental report, that appellant did not have residuals from employment-related stress or coronary artery disease. It stated:

> "This Office has accepted that stress caused a temporary aggravation of [appellant's] coronary artery disease, which resulted in your acute myocardial infarction of November 25, 1974. Medical evidence states that you did not incur heart damage from the myocardial infarction of that date. There is no substantive and unequivocal medical opinion to suggest that your employment caused a permanent aggravation of your coronary artery disease, your currently disabling condition. Dr. Cassis does not provide any objective findings or conclusive medical rationale for his opinion. His opinion is based on conjecture as to the connection between your work and a *permanent* aggravation of coronary artery disease. [Emphasis in original]. [Dr. Cassis'] explanation of the process

accurately describes a temporary aggravation, a fact already accepted by the Office."

By letter dated September 5, 2007, appellant requested reconsideration. He submitted an August 17, 1993 employing establishment work restriction evaluation from Dr. Norberto Schechtmann, in internal medicine and a specialist in cardiology. Dr. Schechtmann reiterated the diagnoses of heart disease and myocardial infarction and stated that appellant could work an eight-hour day with restrictions of no lifting or climbing, no more than one hour of walking, bending, squatting, kneeling, twisting and standing and no more than four hours of sitting.

By decision dated November 9, 2007, the Office denied modification of the July 19, 2007 termination decision.

On November 20, 2007 appellant requested reconsideration. He did not submit any new medical evidence with his request.

By decision dated January 18, 2008, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT--ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[2] Following a proper termination of compensation benefits, the burden of proof shifts back to claimant to establish continuing employment-related disability.[3]

ANALYSIS --ISSUE 1

The Office in its September 28, 2006 decision remanded to the Office for a supplemental report from Dr. Cassis, the Office's second opinion physician, to explain whether or not appellant's coronary artery disease was aggravated by stressful work factors and if so, whether this aggravation was temporary or permanent. Dr. Cassis opined in a June 13, 2007 report that stressful work factors could have temporarily aggravated his coronary artery disease by increasing heart rate and blood pressure, resulting in myocardial ischemia and/or myocardial infarction. However, he stated that it was impossible to prove that employment factors could have caused a permanent aggravation of the condition. Dr. Cassis noted that appellant underwent a stress test in April 17, 2007 which revealed no myocardial ischemia and advised that there was no objective evidence of a decrease in left ventricular fraction or wall motion abnormality. Based on these test results, he concluded there was no permanent damage to the left ventricular that occurred during the stressful period when his coronary artery disease was aggravated. Dr. Cassis advised that stress could have aggravated appellant's coronary artery disease by causing increased inflammation in coronary arteries, leading to a rupture of an atherosclerotic plaque and increased obstruction

[2] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[3] *John F. Glynn*, 53 ECAB 562 (2002).

within a short period of time; however, he stated that appellant's coronary artery disease would have reached the same level had he not worked for the employing establishment.

The Board finds that Dr. Cassis' second opinion reports represented the weight of the medical evidence and negated a causal relationship between appellant's current condition and his accepted employment injury. Dr. Cassis opined based on his examination and the objective medical evidence of record that stressful work factors caused a temporary aggravation of appellant's coronary artery disease, which resulted in his acute 1974 myocardial infarction. He did not conclude, however, that work factors caused a permanent aggravation of coronary artery disease, appellant's current condition. The Office properly found that appellant no longer had any residuals from the accepted condition. The Board will affirm the July 19, 2007 decision.

Following the Office's August 29, 2007 decision, appellant requested reconsideration and submitted Dr. Schechtmann's 1993 work restriction evaluation. This report which indicated that appellant could work an eight-hour day with restrictions, did not constitute probative medical opinion showing that appellant currently has any continuing disability or residuals from his accepted condition. The Office merely provides an indication of appellant's condition in 1993. It does not provide an opinion as to whether his coronary artery disease is causally related to the November 1974 employment injury and has no bearing on his current condition. Dr. Schechtmann's report did not constitute probative medical opinion showing that appellant had any continuing disability or residuals from his accepted condition. His report is summary in nature and merely states that appellant's back condition and symptomatology was causally related to the November 1974 employment injury; it does not provide a well-reasoned and sufficiently supported opinion that would vitiate the Office's August 29, 2007 determination that appellant did not have any employment-related disability or residuals stemming from the November 1974 work injury. Dr. Schechtmann's report does not outweigh Dr. Cassis' opinion nor does it negate the Office's finding that Dr. Cassis' June 13, 2007 report represented the weight of the medical evidence. Thus the Office properly found in its November 9, 2007 decision that appellant failed to submit medical evidence sufficient to modify the Office's August 29, 2007 termination decision.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by constituting relevant and pertinent evidence not previously considered by the Office.[4] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[5]

[4] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[5] *Howard A. Williams*, 45 ECAB 853 (1994).

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by the Office. Appellant did not submit relevant and pertinent evidence not previously considered by the Office. He did not submit any additional medical evidence in connection with his November 20, 2007 reconsideration request. Thus, the request did not contain any new and relevant evidence for the Office to review. In addition, appellant's reconsideration request contains arguments that are cumulative and repetitive of contentions that were presented and rejected by the Office in previous decisions. The Board finds that the Office properly refused to reopen appellant's claim for reconsideration.

CONCLUSION

The Board finds that appellant has not met his burden to establish continuing disability. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2008 and November 9 and August 29, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 5, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board